

AUG 30 1989

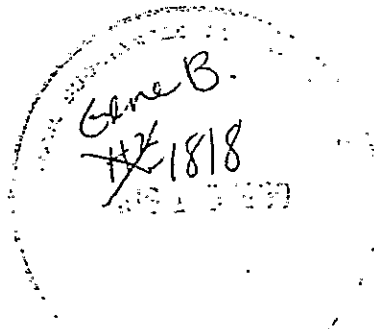
AT 10 O'CLOCK A.M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR, COUNTY RECORDER
FEE \$

BOOK 15304 PG 100

RECORDING REQUESTED BY:
HOWARD K. HATAYAMA, CHIEF 89 168218
WHEN RECORDED, MAIL TO:

Howard K. Hatayama, Chief
Attention: Drew Sales Site Project Officer
Department of Health Services
Toxic Substances Control Division
Region 2
5850 Shellmound, Suite 100
Emeryville, CA 94608

3300 *pd*



COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY
(DREW SALES PROPERTY)

This Covenant and Agreement ("Covenant") is made as of the
11th day of August, 1989, by Cathryne (Drew) Berger,
John Bernard Drew, Michael Dean Drew, and Jacquelyn Drew
("Covenantors"), who are the Owners of record of certain
Property situated in the City of Richmond, Contra Costa County,
State of California, described in Attachment "A" attached hereto
and incorporated herein by this reference ("Property"), and by
the California Department of Health Services ("Department"),
with reference to the following facts:

A. This Property allegedly contains or at one time contained
copper, lead, nickel, and zinc in total concentrations determined
by the Department to constitute a hazardous waste. Copper
compounds are a listed hazardous waste (No. 221); lead compounds
are a listed hazardous waste (No. 406); nickel is a listed
hazardous waste (No. 528); zinc compounds are a listed hazardous

1 waste (No. 782); pursuant to Title 22, California Administrative
2 Code, Section 66680. The properties which render these
3 substances hazardous are described in Title 22, California
4 Administrative Code, Article 11, Section 66693 et seq.
5

6 B. Covenantors have made full and voluntary disclosure to the
7 Department of the alleged presence of hazardous waste, and
8 Covenantors have conducted extensive sampling of the Property.
9

10 C. Covenantors desire and intend that in order to protect the
11 present or future public health, public safety, and the
12 environment, the Property shall be used in such a manner as to
13 avoid potential harm to persons or property which may result from
14 hazardous wastes which allegedly have been deposited on
15 unspecified portions of the Property.
16

17 ARTICLE 1

18 GENERAL PROVISIONS
19

20 1.1 Statement Regarding Hazard. This Covenant is not, and
21 shall not be construed as, a statement or declaration that any
22 existing or potential health, environmental, or other hazard
23 exists or will exist on the Property.
24

25 1.2. Provisions To Run With The Land. This Covenant sets
26 forth protective provisions, covenants, restrictions, and
27 conditions (collectively referred to as "Restrictions"), upon and

1 subject to which the Property and every portion thereof shall be
2 improved, held, used, occupied, leased, sold, hypothecated,
3 encumbered, and/or conveyed. Each and all of the Restrictions
4 shall run with the land, and pass with each and every portion of
5 the Property, and shall apply to and bind the respective
6 successors in interest thereof. Each and all of the Restrictions
7 are imposed upon the entire Property unless expressly stated as
8 applicable to a specific portion of the Property.
9

10 1.3. Concurrence Of Owners Presumed. All purchasers, leasees,
11 or possessors of any portion of the Property shall be deemed by
12 their purchase, leasing, or possession of such Property, to be in
13 accord with the foregoing and to agree for and among themselves,
14 their heirs, successors, and assignees, and the agency,
15 employees, and leasees of such Owners, heirs, successors, and
16 assignees, that the Restrictions as herein established must be
17 adhered to for the benefit of future Owners and Occupants and
18 that their interest in the Property shall be subject to the
19 Restrictions contained herein.
20

21 1.4. Incorporation Into Deeds And Leases. Covenantors desire
22 and covenant that the Restrictions set out herein shall be
23 incorporated in and attached to each and all deeds and leases of
24 any portion of the Property.
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4 ARTICLE II

5 DEFINITIONS

6 2.1. Department. "Department" shall mean the California
7 State Department of Health Services, and shall include its
8 successor agencies, if any.

9 2.2. Improvements. "Improvements" shall mean all buildings,
10 roads, driveways, regradings, and paved parking areas,
11 constructed or placed upon any portion of the Property.

12 2.3. Occupants. "Occupants" shall mean Owners and those
13 persons entitled by ownership, leasehold, or other legal
14 relationship to the exclusive right to occupy any portion of the
15 Property.

16 2.4. Owners. "Owners" shall mean the Covenantors or
17 their successors in interest, including heirs, and assigns, who
18 hold title to all or any portion of the Property.
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20 2.5. Director. "Director" shall mean the director of the
21 California Department of Health Services, or his or her
22 designee.
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ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.1. Restrictions on Use. Covenantor promises to restrict the use of the portion of the Property as described in Attachment "A" as follows:

- a. No residence for permanent human habitation shall be permitted on the Property.
- b. No hospitals or health care clinics shall be permitted.
- c. No schools of any kind for persons under 21 years of age shall be permitted.
- d. No day care centers for children shall be permitted.
- e. No raising of food of any kind on the Property shall be permitted.

3.2. Conveyance Of Property. The Owner or Owners shall provide a thirty (30) days advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law or by reason of this Covenant.

1 3.3. Enforcement. Failure of the Owner or Owners to comply
2 with any of the requirements, as set forth in Paragraph 3.1
3 above, shall be grounds for the Department, by reason of the
4 Covenant, to have authority to require that the Owner or Owners
5 modify or remove any improvements constructed in violation of
6 that Paragraph (3.1). Violation of the Covenant shall be grounds
7 for the Department to take civil and criminal actions against the
8 Owner or Owners as provided by law.

9
10 3.4. Notice In Agreements. All Owners and Occupants
11 shall attach a copy of this Covenant to all purchase, lease,
12 sublease, or rental agreements relating to the Property, and
13 shall incorporate the terms of the Covenant therein.

14
15 ARTICLE IV

16 VARIANCE AND TERMINATION
17

18 4.1. Modification. Any Owner or, with the Owner's consent, any
19 Occupant of the Property or any portion thereof may apply to the
20 Department for a written variance from the provisions of this
21 Covenant, the granting of which by the Department will be
22 dependent upon the standards of but not the procedures of Section
23 25233 of the California Health and Safety Code.

24
25 4.2. Termination. Any Owner or, with the Owner's consent, any
26 Occupant of the Property or a portion thereof may apply to the
27 Department for a termination of the Restrictions as they apply

1 to all or any portion of the Property. The granting of such
2 terminations by the Department will be dependent upon the
3 standards of but not the procedures of Section 25234 of the
4 California Health and Safety Code.

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6 4.3. Term. Unless terminated in accordance with Paragraph
7 4.2 above, by law or otherwise, this Covenant shall continue in
8 effect in perpetuity.

9
10 ARTICLE V

11 MISCELLANEOUS

12
13 5.1. No Dedication Intended. Nothing set forth herein
14 shall be construed to be a gift or dedication, or offer of a gift
15 or dedication, of the Property or any portion thereof to the
16 general public or for any purposes whatsoever.

17
18 5.2. Notices. Whenever any person(s) or parties shall serve
19 any notice, demand, or other communication with respect to this
20 Covenant, each such notice, demand, or other communication shall
21 be in writing and shall be deemed effective: 1) when delivered,
22 if personally delivered to the person being served or to an
23 officer of a corporate party being served or official of a
24 governmental agency being served or 2) three (3) business days
25 after deposit in the mail by United States mail, postage paid
26 certified, return receipt requested:

27

BOOK 1530416 107

To: "Covenantor"
Cathryne (Drew) Berger
John Bernard Drew
Michael Dean Drew
Jacquelyn Drew
c/o Arthur Fine
Mitchell, Silberburg & Knupp
11377 West Olympic Boulevard
Los Angeles, CA 90064

Copy To: California Department of Health Services
Toxic Substances Control Division
Technical Support Unit
Attention: Don Johnson
714/744 "P" Street
Post Office Box 942732
Sacramento, Calif. 94234-7320

Copy To: California Department of Health Services
Toxic Substances Control Division
Attention: Drew Sales Site Project Officer
5850 Shellmound, Suite 100
Emeryville, CA 94608

5.3. Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4. Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5. Recordation. This instrument shall be executed by the Covenantors, and by the Director, California Department of Health Services. If the Department agrees to a proposed modification or termination, the Director and all of the Owners of the land shall execute an instrument reflecting this

1 agreement. This instrument and any instrument modifying or
2 terminating this Covenant shall be recorded by the Covenantors
3 in the County of Contra Costa within ten (10) days of the date
4 of execution.

5
6 **5.6. References.** All references to Code sections include
7 successor provisions.

8
9 IN WITNESS WHEREOF, the parties execute this Covenant as of the
10 date set forth above.

11
12
13 OWNER:

14 *Richard L. Lee*
15 *Richard L. Lee*
16 *Richard L. Lee*
17 *Richard L. Lee*
18 Date: *8-11-89*

19
20
21 DEPARTMENT OF HEALTH SERVICES:

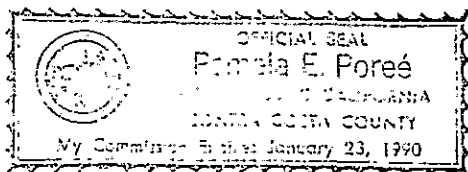
22 X by: *Ch. Wang*
23 Title: *Chief, Region 2, TSCB*
24 Date: *Aug 16, 1989*

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State of California)
County of ^{Alameda} ~~Contra-Costa~~)

On August 11, , 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared John Bernard Drew , ~~personally-know-to-me-or~~ proved to me on the basis of satisfactory evidence to be the person, ~~er--persons~~; who executed the within instrument as Covenantors of the Drew Sales Property, the legal Owners of the Property that executed the within instrument, and acknowledged to me that such legal Owners executed the same pursuant to an agreement between the legal Owners of the Property.

WITNESS my hand and official seal.



Pamela E. Poreé
Notary Public in and for the said
County and State

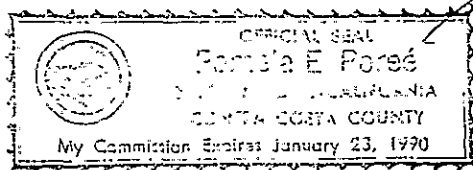
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State of California)
County of ^{Alameda} Contra-Costa)

On August 11, _____, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael Dean Drew, ~~personally-knew-to-me-or~~ proved to me on the basis of satisfactory evidence to be the person, ~~or persons~~, who executed the within instrument as Covenantors of the Drew Sales Property, the legal Owners of the Property that executed the within instrument, and acknowledged to me that such legal Owners executed the same pursuant to an agreement between the legal Owners of the Property.

WITNESS my hand and official seal.



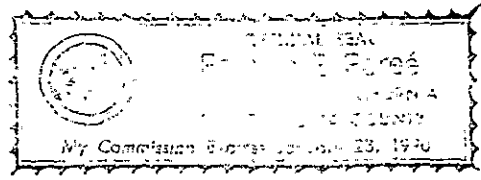
Pamela E. Porée
Notary Public in and for the said
County and State

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State of California)
County of ^{Alameda} Contra-Costa)

On August 11, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Jacquelyn Drew, personally-know-to-me-or proved to me on the basis of satisfactory evidence to be the person, ~~er--persons~~, who executed the within instrument as Covenantors of the Drew Sales Property, the legal Owners of the Property that executed the within instrument, and acknowledged to me that such legal Owners executed the same pursuant to an agreement between the legal Owners of the Property.

WITNESS my hand and official seal.



Pamela E. Korie

Notary Public in and for the said
County and State

1

2 State of California)

3 County of ^{Alameda} ~~Contra-Costa~~)

4

5

6 On August 11, , 1989, before me, the
 7 undersigned, a Notary Public in and for said State, personally
 8 appeared Cathrynne (Drew) Berger , ~~personally-knew-to-me-or~~
 9 proved to me on the basis of satisfactory evidence to be the
 10 person, or persons, who executed the within instrument as
 11 Covenantors of the Drew Sales Property, the legal Owners of the
 12 Property that executed the within instrument, and acknowledged
 13 to me that such legal Owners executed the same pursuant to an
 14 agreement between the legal Owners of the Property.

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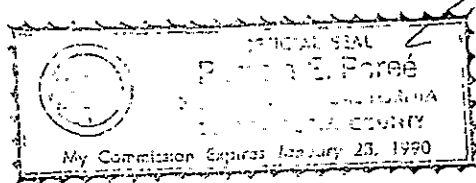
WITNESS my hand and official seal.

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Pamela E. Porée
 Notary Public in and for the said
 County and State

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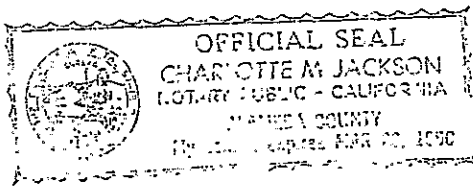
CITY OF SACRAMENTO

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State of California)
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County of Contra Costa)

On August 16, 1989, before me, the undersigned, a
Notary Public in and for said state, personally appeared
Howard K. Hataiyama, personally know to me or proved to me
on the basis of satisfactory evidence to be the person who
executed the within instrument as Chief, Region 2, Toxic
Substances Control Division, of the California Department of
Health Services, the agency that executed the within instrument,
and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.



Charlotte M. Jackson
Notary Public in and for said
County and State

BOOK 1530470 114

ATTACHMENT A

Those parcels of land in the City of Richmond, County of Contra Costa, State of California, discribed as follows:

PARCEL ONE

Portion of Block "B", as designated on the map entitled "Map of the Andrade-Gularte Tract in Contra Costa County, California", which map was filed in the office of the recorder of the County of Contra Costa, State of California, on July 27, 1912 in Volume 7 of Maps, at page 175, containing 2 acres, more or less, described as follows:

Beginning at the most northerly corner of said Block "B"; thence from said point of beginning southerly, along the east line of said Block "B", to the north line of the right of way of the Southern Pacific Company, as designated on said map (7' Maps 175); thence southwesterly, along said north line, 474.66 feet; thence northwesterly, at right angles, to the south line of Castro Street; thence northeasterly, along said south line, to the point of beginning.

PARCEL TWO

Lots 5, 6, 7 in Block 238, as designated on the map entitled "Map of Wall's Second Addition to the City of Richmond, Contra Costa County, California", which map was filed in the office of the Recorder of the County of Contra Costa, State of California, on March 4, 1912 in Volume 6 of Maps, at page 140.